

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between

PROFESSIONAL STAFF CONGRESS/CUNY
Union,

and

**CITY UNIVERSITY OF NEW
YORK/LAGUARDIA COLLEGE**

Employer,

Re: Violation of CBA

AAA Case No. 01-22-
0001-8051

Before
RUTH MOSCOVITCH,
Arbitrator

APPEARANCES:

For the Union:

Peter Zwiebach
Natalie Grieco
Professional Staff Congress/CUNY
61 Broadway, 15th Floor
New York, NY 10006

For the City University:

Lucrece Francois, Associate General Counsel
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AWARD AND DECISION

Pursuant to my authority under the parties' collective bargaining agreement, I was designated as the arbitrator to hear and decide this dispute. On December 12, 2023, I conducted a video hearing via a Zoom platform, during which I heard testimony and received documents into evidence. This grievance was brought by the Professional Staff Congress (the Union) against the City University of New York, LaGuardia Community College (the College). The parties placed six joint exhibits into evidence:

- Jt. 1, the collective bargaining agreement for the years 2017-2023;
- Jt. 2, CUNY Bylaws;
- Jt. 3, the grievance, including step 1, 1 amended and 2;
- Jt. 4, CUNY Statement of the Board of Higher Education on Academic Personnel Practices dated 9/22/1975
- Jt. 5, LaGuardia Community College Governance Plan (2009)

- Jt. 6, College Handbooks from (a) 2014, (b) 2016 and (3) 2019.

The Union presented the testimony of one witness: Dr. Evelyn Burg, Professor and Union grievance counselor for the College. CUNY presented the testimony of one witness: Michael Napolitano, Professor and Chair of the Department of Business Technology; and introduced one exhibit into evidence. There was no stenographic report of the proceedings.

The parties submitted post-hearing briefs to me on April 9, 2024. Neither side has raised any objection to the fairness of this proceeding. I have fully considered the evidence, arguments, and legal authorities presented by the parties in rendering this Award and Decision, whether referenced or not.

ISSUE PRESENTED

The parties did not agree upon a statement of issue. I formulate the issue as:

Did the College violate the Collective Bargaining Agreement, Articles 2.2, 2.4, 18.1, 18.2, the College's Governance Plan, CUNY's Bylaws or Statement of Academic Personnel Practices when it amended its Instructional Staff Handbook in 2019 and substituted the term "Leadership" for "Summary" as a criterion for reappointment, promotion and tenure? If so, what shall the remedy be?

APPLICABLE AUTHORITY

PSC-CUNY Collective Bargaining Agreement

Article 2 – CUNY-PSC Relationships

2.2 The entire Agreement between the parties consists of the terms herein stated, and this Agreement terminates all prior Agreements and understandings. All Bylaws, policies and resolutions of the Board, and all Governance plans and practices of the Colleges and of the departments, as currently in effect, or as the same may be hereafter adopted, supplemented or amended, shall be subject to the said stated terms of this Agreement.

2.4 The rights, functions and powers of the Board and its officers and agents, and of the officers of CUNY, under the applicable law of the State and the Bylaws of the Board,

including the Board's right to alter or waive existing Bylaws or policies in accordance with the procedures specified in the Bylaws shall remain vested in the Board and in said officers and agents, subject to the following:

(a) ... If there is an inconsistency or conflict between an existing Bylaw or policy of the Board and a stated term of this Agreement, the said term of this Agreement shall govern, and the Board shall promptly cause its Bylaws to be amended or repealed to conform therewith.

(c) In the event it is proposed that a Bylaw, procedure or policy respecting a term or condition of employment of all or some of the employees covered by this Agreement be adopted, amended or rescinded by resolution of the Board, the PSC shall be given notice and an opportunity to consult in respect of said action prior to said action being taken or becoming effective, in the manner specified [herein] ...

Article 18 – Professional Evaluation

18.1 The evaluation of the professional activities of all employees in a public institution of higher education is essential to the maintenance of academic and professional standards of excellence. The purpose of professional evaluations shall be to encourage the improvement of individual professional performance and to provide a basis for decisions on reappointment, tenure and promotions. An evaluation of professional activities shall be based on total professional performance. Written evaluation shall be on file for all employees.

18.2 (a) Evaluation of a member of the teaching faculty shall be based on total academic performance, with special attention to teaching effectiveness, including, but not limited to, such elements as:

1. Classroom instruction and related activities;
2. Administrative assignments;
3. Research;
4. Scholarly writing;
5. Departmental, college and university assignments;
6. Student guidance;
7. Course and curricula development;
8. Creative works in individual's discipline;
9. Public and professional activities in field of specialty.

(Jt. 1)

CUNY BYLAWS

ARTICLE VIII. Organization and Duties of Faculty

SECTION 8.6. Faculty/Academic Councils.

Each college shall have a faculty or academic council, which shall be the primary body responsible for formulating policy on academic matters. The composition of a college's faculty or academic council shall be set forth in its governance plan approved by the board of trustees.

(Jt. 2)

The Board of Higher Education of the City of New York

Statement of the Board of Higher Education on Academic, Personnel Practice in the City University of New York

V. Promotion

1) The criteria for promotion shall be as follows:

- b) to Associate Professor - The candidate shall present evidence of scholarly achievement following the most recent promotion, in addition to evidence of continued effectiveness in teaching; the candidate should thus meet the qualifications required above (IV, 2) for tenure.
- c) to Professor - The candidate must meet all the qualifications for an Associate Professor, in addition to having an established reputation for excellence in teaching and scholarship in his discipline. The judgment on promotion shall consider primarily evidence of achievement in teaching and scholarship following the most recent promotion.

(Jt. 4)

LAGUARDIA COMMUNITY COLLEGE GOVERNANCE PLAN (2009)

ARTICLE I. POWERS AND FUNCTIONS OF THE COLLEGE SENATE

SECTION I – Responsibilities of the College Senate

The College Senate shall have responsibility, subject to guidelines and policies established by the CUNY Board of Trustees, to formulate policy pertaining to the operation of LaGuardia Community College, including the following:

- D. Determine and review all policies dealing with instruction, with the academic calendar, and with faculty and student welfare and development consistent with academic freedom and professional standards.

- J. Create bylaws for its own operations consistent with its governance plan and the policies and bylaws of the CUNY Board of Trustees.
- L. Inform itself on College programs and operations. In the course of carrying out its responsibilities, the Senate, through its Executive Committee, shall be fully advised of, shall routinely receive, and shall be free to seek information from the College's administrative officers on all matters germane to the programs and operations of the College.

(Jt. 5)

LAGUARDIA COMMUNITY COLLEGE EMPLOYEE HANDBOOK FOR INSTRUCTIONAL STAFF

First Handbook, 1975

CHAPTER FIVE – PROFESSIONAL STAFF POLICIES AND PROCEDURES

III. Reappointment and Promotion

Qualifications for Promotion to Associate Professor

Superior contribution in classroom instruction, students counseling and significant contributions according to criteria listed above ... In addition, the candidate must display leadership qualities. The by-laws of the Board of Higher Education state: "There shall be evidence that his alertness and intellectual energy are respected outside his own immediate academic community. There shall be evidence of his continued growth. Longevity and seniority alone shall not be sufficient for promotion."

(C. 1, p. 44, emphasis in the original.)

Handbooks from 2014, 2016

PROMOTION PROCEDURES FOR PROFESSORIAL TITLES

The members of the Instructional staff who have fulfilled the eligibility requirements will be considered for promotion during the Spring Semester. All successful candidates will be recommended to the Board of Trustees with an effective date of September 1.

Criteria

Instructional staff members must fulfill the criteria outlined for reappointment for promotion. In addition, the individual must demonstrate a willingness and ability to perform effectively in the higher rank. For promotion to Associate Professor (prior to tenure) and Professor, the candidate must also be recognized in his or her particular area for leadership ability. There must be

evidence of the person's sustained and high quality commitment to the College over several years, as well as a written record to support the following requirements:

1. Classroom instruction
2. Departmental Contributions/Assignments
3. College and University Contributions/Assignments
4. Student Guidance
5. Research and Scholarly writing/ Creative Works/Professional Activities
6. Collegiality
7. Summary

The individual personnel file should contain the same documents as those required for reappointment. Additionally, in the case of tenured or certificated staff, superior peer observations and annual performance evaluations for the last three academic years prior to the request for promotion are required. Annual evaluations must be conducted by April 1 each academic year for all tenured faculty except those in the rank of Full Professor.

(Jt. 6a, b)

Handbook from 2019

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1. Classroom instruction
2. Departmental Contributions/Assignments
3. College and University Contributions/Assignments
4. Student Guidance
5. Research and Scholarly writing/ Creative Works/Professional Activities
6. Collegiality
7. Leadership

The individual personnel file should contain the same documents as those required for reappointment. Additionally, in the case of tenured staff, annual performance evaluations for the last three academic years prior to the request for promotion are required.

(Jt. 6c)

FACTUAL BACKGROUND

LaGuardia Community College (the College) is one of the Colleges within the City of New York system (CUNY). The Professional Staff Congress (PSC or Union) is the collective bargaining representative for instructional staff.

Each college within the CUNY system is administered under the CUNY umbrella and is subject to CUNY Bylaws, policies and procedures. The parties have a collective bargaining agreement which acknowledges CUNY's "rights, functions and powers" under the applicable law of the State and the Bylaws of the Board, while at the same time acknowledging that in case of an "inconsistency or conflict between an existing Bylaw or policy of the Board and a stated term" of the collective bargaining agreement, the terms of the agreement shall govern. (Jt. 1, Article 2)

In 2019 the College published a new version of its Handbook for Instructional Staff. In the section devoted to reappointment and promotion, the Handbook contains a change in language that is the subject of this grievance. In the section on Promotion for Professorial Titles, the list of Criteria was altered: in place of #7, "Summary," the word "Leadership" was substituted.

The word leadership appeared in official policy documents prior to its appearance as a numbered "criteria" in 2019:

- In the first College Handbook, issued in 1975, the word appears within a general paragraph about "Qualifications for Promotion to Associate Professor: "the

candidate must display leadership qualities.” (C. 1)

- In the 2014 and 2016 versions of the College Handbook, the word appears in the opening paragraph of the “Criteria” section: “the candidate must also be recognized in his or her particular area for leadership ability.”

The word leadership does *not* appear in

- Article 18 of the parties’ the collective bargaining agreement which addresses professional evaluations and lists 9 criteria, or
- CUNY Bylaws, or
- CUNY’s 1975 Statement on Academic Personnel Practices.

Professor Michael Napolitano, currently the chair of the Department of Business & Technology at the College, testified on behalf of CUNY. He was involved in recommending the change at issue here to the College president. At the time he was a member of the college-wide P&B (Personnel and Budget) committee. He gave the following reasons for recommending this change:

- The committee saw that versions of the write-ups submitted for promotional decisions were different;
- The chairs of some faculty departments said that faculty were confused;
- Some people thought the word “Summary” was unclear;

In Professor Napolitano’s view there was no change in the assessment of faculty after as compared with before this change: the sentence on leadership abilities in the paragraph preceding the itemized listing of criteria remained the same after the change, and the concept of leadership continued to be “threaded” throughout the criteria. According to Professor Napolitano everything in the new handbook “stayed the same,”

but “we tried to clarify it.”

Evelyn Burg, professor of English, (now within the Department of Education and Language Acquisition) testified on behalf of the Union. Professor Burg is the grievance counselor for the Union at the College. As grievance counselor, she and others in the Union have represented faculty who were turned down for promotions prior to 2019 because of deficiencies in leadership. She testified that in many cases, leadership was the major factor in the negative decisions. The Union’s objection in those cases was that “leadership” was ambiguous and arbitrary: it was not a defined term and not understood by the faculty.

Professor Burg testified that when the 2019 Handbook appeared with “leadership” now listed as an itemized criterion, she sought to learn whether any governing body had approved the change. She asked the President of the Faculty Senate and the representative from her department who sits on the Senate: they told her no, this never came before the Senate and the Senate never decided to make leadership a “criteria” for promotion or tenure. Professor Burg further testified that she does not know what the term “leadership” means in the current iteration of the Handbook.

POSITIONS OF THE PARTIES

The Union argues that it has met its burden to prove, by a preponderance of the credible evidence, that CUNY violated the collective bargaining agreement, bylaws and written policies of the Board when the College changed its Instructional Staff Handbook in 2019 to substitute the term “Leadership” for “Summary” as one of the Criteria for Promotion for Professorial Titles. In particular:

- 1) The College overstepped its authority in issuing a new set of criteria for

reappointment, promotion and tenure: that authority is vested in the Board of Trustees of CUNY as set forth in New York education law, subject to the terms of the parties' collective bargaining agreement:

- a) The Board adopted a policy in 1975, the Statement on Academic Personal Practice, that sets forth criteria for promotion, not including "leadership;"
 - b) Article 18.1 sets forth criteria for decisions on reappointment, tenure and promotions; that, too, does not include "leadership" as a criterion;
 - c) Although the College Handbooks of 2014 and 2016 include the term "leadership" in the introductory section on promotion -- specifically "the candidate must also be recognized in his or her particular area for leadership ability" -- the term "leadership" was not itemized as a separate criterion, until the 2019 Handbook.
- 2) The Handbook change was approved by the College Personnel and Budget Committee, in violation of the College's Governance Plan as set forth in CUNY's Bylaws:
- a) Article VIII, Section 8.6 of the Bylaws gives the primary responsibility for formulating policy on academic matters to the faculty council;
 - b) Likewise, the College's Governance Plan assigns responsibility for determining and reviewing "all policies dealing with instruction ... and with faculty welfare and development" to the College Senate;
 - c) Further where the College's Governance Plan lists the responsibilities of the College Personnel and Budget Committee, in Article VIII, Section 8.7, the creation of academic policy, including on reappointment, promotion and tenure, is not included within the P&B's remit;

- d) It is undisputed that the change in the College Handbook regarding criteria for promotion was in fact recommended and initiated by the P&B committee and not the College Senate, which has that authority under CUNY's Bylaws;
- 3) The new formulation of leadership criteria is ambiguous and arbitrary in application:
- a) The P&B committee that adopted this new language is the same body that reviews each applicant's submission for promotion, which, under college rules, takes place in a confidential meeting, making it impossible to determine how the criteria are being applied:
 - b) While the P&B may have felt that the concept of "Leadership" as it appeared in the 2014 and 2016 Handbooks was unclear, the current language provides no clarity and, instead, creates more confusion: the earlier phrase identifying "leadership ability" in "one's area" at least gave some indication of the parameters for evaluation leadership – it had to be in one's area or field of study; the current inclusion of the term "leadership," standing alone as the 7th criteria, gives no guidance whatever to instructional personnel about what they need to present and how they will be judged.

For these reasons, the Union asks that this grievance be upheld. As a remedy, the Union asks the Arbitrator to direct CUNY to remove the imposition of "leadership" from the criteria for reappointment, tenure and promotion in the College Instructional Staff Handbook.

CUNY argues, on the other hand, that the Union has not met its burden to prove a violation of the collective bargaining agreement, bylaws and written policies of the Board in that:

- 1) The 2019 change to the College's Instructional Staff Handbook was immaterial, in that the term "leadership" has been included in the Handbook as far back as 1975:
 - a) The term "leadership" appears in a prose statement in the original Handbook, followed by a numbered list of the remaining elements or criteria to be met for promotion or tenure; the statement was that candidates must "display leadership qualities."
 - b) The criteria "Summary" was meant to indicate that there should be a summary of all activities showing leadership; because the term "summary" was ambiguous, it was removed, and the word "leadership" was substituted;
 - c) As is clear from a simple reading of the Handbook, and the testimony of the witnesses, the change in the 2019 Handbook did not constitute the addition of new criteria, but simply a repositioning of text; there is no substantive difference between the 2019 version and the earlier Handbooks;
- 2) The Personnel and Budget Committee (P&B), which is headed by the College president, and consists solely of faculty members, is the only body authorized to review the Handbooks and reposition the language; the Faculty Senate by contrast includes students and thus has no authority to make changes to the Handbook;
 - a) CUNY's Bylaws charge College presidents with responsibility for setting and maintaining faculty standards in each college; this responsibility includes decisions on promotions, tenure, reappointment and the criteria necessary to maintain faculty standards;
 - b) the Statement on Academic Personnel Practices and CUNY Policy 5.01 are similar and include the same language, identifying the president, the principal academic

officer, as the person ultimately responsible for the quality and integrity of faculty personnel processes; these documents stress the importance of faculty participation in these matters;

- c) the collective bargaining agreement likewise recognizes the authority of the faculty and the Board of Trustees, with the College president as the “executive agent”;
 - d) while the Bylaws provide that a college president serves as chair of the faculty council or senate as well as the P&B committee and “equivalent bodies,” at the College the only body that consists entirely of faculty, presided over by the president, is the P&B committee; the P&B Committee consists of the chairs of the academic departments and thus represents the entire college faculty;
 - e) by contrast the Senate is comprised of faculty, staff and students; the Governance plan identifies the Senate as the body dealing with “academic standards” which means curriculum matters, not reappointments, promotion or tenure;
 - f) the Union used the term “Senate” and “Faculty Council” interchangeably; however, these are two different bodies: the Faculty Council was created by article 8.6 of the Bylaws and consists solely of professional staff members; the president does not sit on the Faculty Council, as he does on the Senate;
 - g) the Handbook explicitly states that the College-wide P&B reviews personnel policies and sets standards and procedures.
- 3) The witnesses confirmed that the faculty had asked for greater clarity about the criteria on “leadership:”
- a) CUNY’s witness, Professor Napolitano, a longtime member of the P&B,

confirmed that faculty had expressed a desire for greater clarity on the “leadership” criterion in the Handbook; he further testified that the term “Summary” always referred to a summary of activities that demonstrated “leadership;” the change was made to alleviate confusion;

- b) the Union’s witness, Professor Burg, testified that she has handled many grievances where promotion was denied and where “leadership” was a major factor, due to its “ambiguity;” in her own promotion to Assistant Professor, prior to tenure, she had to do “major things” to demonstrate “leadership ability.”
- 4) Articles 2 and 18, relied upon by the Union, are not applicable to criteria for promotion and tenure, because the Handbook is not a board resolution or policy;
- a) Article 18 of the collective bargaining agreement addresses employee annual evaluations and establishes the importance of these as a tool to improve individual performance; it does not address, let alone govern, criteria for promotion or tenure;
 - b) As the Union’s own witness, Professor Burg, testified, it is the College’s Handbook that sets forth the criteria for promotion at the College.

Because the Union has failed to meet its burden to show that CUNY changed the criteria for reappointment, promotion and tenure, it has likewise failed to prove a violation of the collective bargaining agreement, or of CUNY policies. Accordingly, this Grievance should be denied.

DISCUSSION

After carefully considering the entire record before me, including my assessment of the credibility of witnesses and the probative value of evidence, I find that the

College's change to its Handbook in 2019 was a substantive one; implementation of the change violated CUNY's governing policies and the parties' collective bargaining agreement. Accordingly, I grant this grievance.

As a threshold matter, CUNY has argued that the change to the Instructional Staff Handbook adopted by the College in 2019 was not material. I disagree. The change was not merely a repositioning of a provision from the prose paragraph preceding the list of criteria to the list itself as CUNY asserts.

The term "leadership" appears in all editions of the Handbook in evidence, in a clause that states: "the candidate must also be recognized in his or her particular area for leadership ability." In that context, leadership is plainly referring to employees' activities, status, and stature within their "particular area," that is, within their academic field. That language remains in the prose paragraph in the 2019 Handbook, while the simple word "leadership" replaces "summary" as the seventh criterion. Unlike in the introduction, there is nothing defining or limiting the term "leadership" in #7. Does it refer to leadership within the employee's "particular area" or does it refer to some other arena of leadership, perhaps in college governance or the realm of civic engagement? There is no way to tell.

In its post-hearing brief, CUNY argues that the word "Summary" that had appeared in the 2014 and 2016 Handbooks, "was meant to indicate that there should be a summary of all activities showing leadership." (CUNY Post hearing brief, p. 3) CUNY also cites the testimony of Professor Napolitano for this point, writing "that the term 'summary,' that had been listed as a separate bullet under the promotion criteria in the earlier Handbooks, always referred to a summary of activities that showed leadership."

(Id., p. 7) We do not have a verbatim transcript, so I am unable to verify CUNY's claim regarding Professor Napolitano's testimony. However, my own, fairly detailed, notes do not support CUNY's claim. My notes show the Professor testifying, "We meant it to be summary of all qualities that get you to the level for promotion." He went on to talk about the summary as a way to "fit in leadership and tie everything together:" "the way we talk about it" there is a "mention of leadership ability that is the threading quality that goes through" and must be part of the Summary. So the "Summary" was meant to include leadership as one among several criteria.

Professor Burg testified that she understood the promotion process as requiring the applicant to first declare candidacy for promotion, and then "present yourself, write a summary document." That is, she regarded the 7th criteria of "Summary" as a summation presenting the strengths of the candidate with regard to all of the criteria.

Based upon all of this testimony, I must reject CUNY's assertion that the term "Summary" that appeared in the 2014 and 2016 Handbooks actually meant "Summary of Leadership Activities."

There is another point that needs to be made regarding the change. The addition of "leadership" as one of seven items set out below the term "Criteria" clearly elevates "leadership." Those seven items are a checklist that applicants and reviewers alike will focus on, ticking off the items in the submission that respond to each of the seven criteria. While the concept of leadership in one's area was always present, it was part of the general concept that an applicant for promotion had to be "recognized" in his or her field. Generally, that meant the applicant published notable articles or books, or organized or participated as a speaker at conferences or otherwise had some degree of

prominence -- beyond the College – in their field of academic study; as stated in the Statement on Academic, Personnel Practice, the applicant needed to have “an established reputation for excellence in teaching and scholarship in his discipline.” Now, as a “requirement,” one of the seven criteria, there will need to be a different and more pointed focus on whatever “leadership” in general means.

In sum, I find that the rewriting of the Handbook in 2019 to substitute the term “Leadership” for the term “Summary” was not simply a rearrangement of terms already present in the Handbook; it was a material change.

I further find that if CUNY sought by this change to clarify terms that were ambiguous, it failed to achieve that goal. Both parties agree the concept of “leadership ability” “in one’s “particular area” as it appeared in the 2014 and 2016 Handbooks, was confusing, ambiguous and not understood by the faculty: Professors Napolitano and Burg both testified to this confusion. It is evident to me that the 2019 alteration to the Handbook did not cure this problem; instead, it created a new problem of what was meant by the 7th criteria, “leadership,” devoid of any contextual description.

However, the issue before me is not whether CUNY did a good job in clarifying matters when it rewrote the Handbook, but whether it violated the collective bargaining agreement, or established CUNY policies. I find that it did.

CUNY, like many other universities, has adopted a shared governance system, granting the faculty a major role with respect to academic policies and practices. As the governance plan puts it: “governance of the College is participatory and shared among the faculty, the staff, the students, the alumni, and the administration.” (Jt. 6, p. 1) CUNY Bylaws call for the formation on each campus of a Faculty or Academic Council,

which “shall be the primary body responsible for formulating policy on academic matters.” (Jt. 2) The College Senate, at least at LaGuardia, is charged with responsibility, subject to CUNY guidelines and policies, to “determine and review all policies dealing with instruction, with the academic calendar and with faculty and student welfare and development consistent with academic freedom and professional standards.” (Jt. 6, p. 1) The College Senate is also responsible to “inform itself on College programs and operations” and is to be “fully advised of, shall routinely receive, and shall be free to seek information ... on all matters germane to the programs and operations of the College.” (Jt. 6, p. 2) Criteria for reappointment, promotion and tenure is surely a policy dealing with faculty development and a matter germane to the operations of the College.

The collective bargaining agreement recognizes CUNY’s obligations to give notice to and consult with the Union prior to adopting or amending or rescinding a Bylaw, procedure or policy “respecting a term or condition of employment.” (Jt. 1, Article 2) For some areas, such as professional evaluation – which provides a basis for decisions on reappointment, tenure and promotions – the collective bargaining agreement lists very specific elements that must be reviewed. (Jt. 1, Article 18)

CUNY implies that it fulfilled its obligations to consult with the faculty in this instance because it was the College P&B committee -- comprised entirely of faculty and chaired by the President -- that recommended the changes in the Handbook to the President. CUNY asserts that the College Senate would not be the appropriate body to consider this matter because it includes students and staff as well as faculty.

There was not a great deal of testimony in the hearing regarding the respective

roles of the College Senate, the Faculty Council, and the College P&B or the relationship of these bodies to one another. All three are discussed in the 2009 Governance Plan. The College Senate takes up the lion's share of the governance plan, with five separate Articles covering 15 pages out of 18, including one provision that sets forth the "responsibilities" of the Senate (Article I, Section 1, p. 1). Within these Articles there is a reference to and recognition of the Faculty Council as an "elected body concerned with faculty affairs." (Article I, Section 2, p. 2) The various P&B committees are referred to at the very end of the Governance Plan in Article VIII. Those provisions are only a page in length and they do not include a provision setting out the purpose or responsibilities of the P&B, as there is for the College Senate. (Cf. Article I, Sec. 1 "Responsibilities of the College Senate" with Article VIII, p. 15-16)

I am unable to determine, based upon the record before me, which college body or bodies – the College Senate, Faculty Council or P&B Committee – properly has a role regarding proposed amendments to the Instructional Staff Handbook, or what the Union's role may be. Fortunately, I need not issue a ruling on that subject. I am only tasked with deciding whether the College violated the collective bargaining agreement, or CUNY's Bylaws or policies and procedures by changing the criteria for retention and promotion when it changed its Handbook. I find that it did. The change was substantive. And if the new language is unclear in what it achieved, nevertheless, it gives new and different direction to employees applying for reappoint or promotion.

Accordingly, I grant this grievance. CUNY is ordered to withdraw the provision for criteria for reappointment, promotion and tenure in the 2019 Handbook for Instructional Staff and reinstate its prior criteria.

AWARD

For all of the reasons set forth above, I grant this grievance.



Ruth Moscovitch
Arbitrator

AFFIRMATION

Pursuant to CPLR 7507,1 hereby affirm that I am the Arbitrator in the above matter and that I have executed the foregoing as and for my Opinion and Award.

Dated: April 15, 2024



RUTH MOSCOVITCH